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MICHAEL RODAK, JR., CLE

No. .....

IN THE

Supreme Court of the United States

..... TERM OF 19.....

PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS,

Petitioner,

v.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, ET AL,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 456 F.2d 50, and the District Court's Order of Dismissal was not officially reported. The Opinion and the Orders of the lower courts are set out in the attached Appendix A.

JURISDICTION

The opinion of the Court below was entered on March 2, 1972, and Judgment was entered on March 24, 1972.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The jurisdiction of the Court below and the District Court rested on 28 U.S.C. § 1331 and § 1337.

QUESTIONS PRESENTED

Whether the Court below erred in holding it had no jurisdiction to enjoin the Respondent's conduct due to the provisions of the Norris-LaGuardia Act, 29 U.S.C. § 101 *et seq.*

Whether the Norris-LaGuardia Act, 29 U.S.C. § 101 *et seq.*, should be accommodated and reconciled with other important statutory provisions, treaty obligations, foreign policy and trade considerations and the comity of nations.

Whether the decision of this Court in *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365 (1960), should be reconsidered.

CONSTITUTION, TREATIES AND STATUTES INVOLVED

The relevant provisions of the United States Constitution are Article I, Section 8, Clause 3; Article II, Section 2, Clause 2; and Article VI, Clause 2. The relevant treaties are exemplified by the treaty of Friendship, Commerce and Navigation between the United States of America and Liberia, 54 Stat. 1739 (1938). The relevant statutory provisions are: the Norris-LaGuardia Act, 29 U.S.C. § 101 *et seq.* and the Shipping Act, as amended, 46 U.S.C. § 815. These provisions are set forth in Appendix B.

This Petition seeks review of a judgment of the Court of Appeals for the Fifth Circuit, affirming an Order of Dismissal entered by the District Court, based upon the proscriptions of Section 4 of the Norris-LaGuardia Act and this Court's decision in *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365 (1960).

STATEMENT OF CASE

On or about October 30, 1971, the Respondents, the International Organization of Masters, Mates and Pilots, AFL-CIO; National Maritime Union; Radio Officers Union of the United Telegraph Workers; American Radio Association; Seafarers International Union, and Marine Engineers Beneficial Association, hereinafter referred to as "Unions," began a program of picketing foreign flag ships at the facilities of Petitioner, hereinafter referred to as "Port of Houston." At the hearing before the District Court, the Unions stated in open Court that any ship berthing at the Port of Houston, flying a Liberian, Panamanian or Honduran flag would be picketed.[1] The picketed ships berthed at Port of Houston docks at the time suit was filed, "The Eastern Glory", "The Ilkon Tak" and "The Saint Nicolas" were all flying the Liberian flag and were registered under the laws of the Republic of Liberia and were using the Port of Houston pursuant to Article VII of the Treaty of Friendship, Commerce and Navigation between the United States and Liberia providing that each country "shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation," and pursuant to the statutory right of non-discriminatory access embodied in Section 16 of the Shipping Act, 46 U.S.C. § 815.

The crews of the picketed ships were hired in foreign ports pursuant to foreign laws and were covered by col-

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[1] Although this limitation to particular flags was indicated to be one of manpower rather than purpose, obviously, if the right to picket these particular foreign flags exists, the broader right to picket any and all foreign flag vessels at any and all United States ports would also exist.

lective bargaining contracts negotiated in foreign countries with foreign unions existing by virtue of the laws of various friendly foreign nations. The Unions expressly disclaimed, in open Court, any intent to organize or to represent the foreign crews of these vessels. Samples of the uniform picket signs and literature handed out by the pickets, admitted in evidence, are reprinted as Appendix C.

As a result of the Unions' activities the picketed ships could not be loaded, unloaded or serviced, and other foreign flag ships were diverted to other ports, which were not subject to the Unions' picketing (in many instances as a result of injunctive orders entered by various state courts). As a result, the Port of Houston suffered irreparable harm, the treaty obligations of the United States were breached and our relations with friendly foreign nations were jeopardized.

The Port of Houston brought an action in the United States District Court for the Southern District of Texas, Houston Division, seeking injunctive relief against the Unions' activities on the ground that such activities constituted a violation of the laws and treaties of the United States, and an undue burden and interference with foreign relations and foreign commerce.

The district court denied the Port of Houston's request for a temporary restraining order and ordered a hearing on its request for a preliminary injunction. At the conclusion of the hearing on the preliminary injunction, the district court concluded, relying on this Court's decision in *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365 (1960), that it did not have jurisdiction to enjoin the Unions' conduct because of the provisions of the Norris-LaGuardia Act, 29 U.S.C. § 104. The Court of Appeals for the Fifth Circuit affirmed the district court's decision, like-

wise relying on the Norris-LaGuardia Act and the *Marine Cooks* case.

REASONS FOR GRANTING WRIT

1. The decision of this Court in *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365 (1960), should be reconsidered and overruled because that decision like this Court's decision in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962), failed to accommodate the proscriptions of the Norris-LaGuardia Act to other important statutory enactments and treaties and the policy considerations embodied therein.

The lower courts denied the Port of Houston's requested relief based upon the proscriptions of the Norris-LaGuardia Act, 29 U.S.C. § 104, relying on *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365 (1960), wherein this Court considered a case involving the picketing of a foreign flag ship and held that the Norris-LaGuardia Act applied since the Unions' conduct constituted a "labor dispute" within the literal meaning of that Act's broad language, and, therefore, held the lower court lacked jurisdiction to issue an injunction notwithstanding the legality or illegality of the conduct.

This Court again expressed this same literal view in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195 (1962), rejecting an accommodation of Norris-LaGuardia with other statutory enactments and policy considerations and giving a literal meaning to the wording of the Norris-LaGuardia Act. However, subsequently this Court rejected the narrow and isolated approach of *Sinclair*, and held that the purposes and prohibitions of the Norris-LaGuardia Act must be viewed in the light of the other statutes and important policy considerations. *Boys Markets, Inc.* v.

Retail Clerks Union, 398 U.S. 235 (1970). In *Boys Markets*, because of important policy considerations in the resolution of industrial disputes by private agreements to arbitrate, this Court held that the strictures of Norris-LaGuardia must be accommodated to other overriding policy considerations. In so holding, the Court expressly overruled its earlier decision in *Sinclair*, wherein accommodation had been rejected and Norris-LaGuardia applied, based on the same reasoning and rationale as set forth in *Marine Cooks*. In rejecting and overturning its earlier view in *Sinclair*, the Court said:

> "The literal terms of § 4 of the Norris-LaGuardia Act must be accommodated to the subsequently enacted provisions of § 301(a) of the Labor Management Relations Act and the purposes of arbitration. Statutory interpretation requires more than concentration upon isolated words; rather, consideration must be given to the total corpus of pertinent law and the policies that inspired ostensibly inconsistent provisions."[2] [398 U.S. at 250].

The rationale of *Marine Cooks*, like that of *Sinclair*, in failing to consider or give weight to other important policy

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[2] Accommodation and reconciliation of Norris-LaGuardia with other policy considerations, as embodied in other statutes, has been dictated by this Court in other contexts as well. The duties and obligations embodied in the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, enacted subsequently to the Norris-LaGuardia Act, have been held by this Court to require a balancing of the proscriptions of Norris-LaGuardia so as to allow full effect to the duties and obligations of the Railway Labor Act. *Chicago & North Western Ry.* v. *United Transportation Union*, 402 U.S. 570 (1971); *Railroad Trainmen* v. *Chicago River & Ind. R.R.*, 353 U.S. 30 (1957). Similarly, this Court has long held that the interlacing effect of the anti-trust laws and the Norris-LaGuardia Act must be considered together and that "Such legislation must not be read in a spirit of mutilating narrowness." *United States* v. *Hutcheson*, 312 U.S. 219, 235 (1941).

considerations, is in conflict with other pronouncements of this Court requiring an accommodation of the literal provisions of the Norris-LaGuardia Act with other enactments and policies, and the Writ should be granted to reconsider and overturn the narrow non-accommodation view enunciated in *Marine Cooks.*

2. The Norris-LaGuardia Act should be accommodated and reconciled with other statutory enactments and subsequent treaties with foreign nations because of compelling considerations of foreign policy, comity among nations and foreign trade and commerce.

In view of the fact that this Court, as evidenced by *Boys Markets,* has indicated that the past, literal interpretation given to the Norris-LaGuardia Act, originally passed in light of economic, social and political circumstances which no longer exist today, must yield in the face of strong countervailing public policy, the Port of Houston submits that the foreign policy and international trade considerations present in this case are equally as compelling as the national policy considerations presented in the *Boys Markets* case. Indeed, this Court has long recognized the importance of these foreign policy and trade considerations and has consistently rejected attempts to interfere with and disrupt foreign relations and foreign commerce. See, *e.g., Brown* v. *Duchesne,* 60 U.S. (19 How.) 183 (1857); *McCulloch* v. *Sociedad Nacional,* 372 U.S. 10 (1963); *Incres S.S. Co.* v. *Maritime Workers,* 372 U.S. 24 (1963). The courts below, in adhering to *Marine Cooks,* failed to consider these compelling, countervailing interests. The question presented is basically whether the interest of a single person or small group can be allowed to imperil and impede foreign policy and foreign trade, for as stated by this Court in *United States* v. *Holliday,* 70 U.S. (3 Wall.) 407, 417 (1866):

> "Commerce with foreign nations, without doubt, means commerce between citizens of the United States and citizens or subjects of foreign governments, as individuals."

The national interest at stake in this case has been historically granted great weight by this Court in its decisions.[3] Small groups should not be allowed to impede and imperil the national interest by barring, for self-interest reasons and in violation of solemn treaties, the ships of foreign nations from effective access to United States ports. That is the effect of the decision of the courts and of this Court in *Marine Cooks*, if allowed to stand.

From the very founding of our nation, this Court has recognized the importance of international comity, foreign relations, international law, and foreign commerce. Chief Justice Marshall in *The Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804), said that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains. . . ."

Again, in *Brown* v. *Duchesne*, 60 U.S. (19 How.) 183, 197-99 (1857), this Court in a suit between an American patent holder and a foreign ship owner who had installed the patented device on his foreign ship in a foreign port without a license, accommodated the patent laws of the United States to avoid conflict with foreign relations and

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[3] In *Brown* v. *Maryland*, 25 U.S. (12 Wheat) 419 (1827), Chief Justice Marshall, in holding a state import tax unconstitutional under Article I, Section 8 of the Constitution, discussed the impact on foreign relations and foreign commerce which could occur if the tax were allowed to stand, stating: "What would be the language of a foreign government, which should be informed that its merchants, after importing according to law, were forbidden to sell . . . ? What answer would the United States give to the complaints and just reproaches . . .? No apology could be received, or even offered. Such a state of things would break up commerce. [25 U.S. at 447].

foreign commerce. In so doing, the Court pointed out the adverse impact on foreign policy and treaties that would occur if a private litigant was allowed to pursue his private grievance, stating:

> "Congress may, unquestionably, under its power to regulate commerce, prohibit any foreign ship from entering our ports, which, in its construction or equipment, uses any improvement patented in this country, or may prescribe the terms and regulations upon which such vessel shall be allowed to enter. Yet it may perhaps be doubted whether Congress could by law confer on an individual, or individuals, a right which would in any degree impair the constitutional powers of the Legislative or Executive Departments of the government, or which might put it in their power to embarrass our commerce and intercourse with foreign nations, or endanger our amicable relations. But however that may be, we are satisfied that no sound rule of interpretation would justify the court in giving to the general words used in the patent laws the extended construction claimed by the plaintiff, in a case like this, where public rights and the interest of the whole community are concerned."[4]

In this case, the natural, intended and probable consequence of the Unions' picketing was to close the Port of Houston to all foreign ships. This was merely a part of the Union's national plan to close all the ports of the

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[4] See also *Lauritzen* v. *Larsen*, 345 U.S. 571, 582 (1953), wherein this Court stated: "Maritime law, like our municipal law, has attempted to avoid or resolve conflicts, between competing laws by ascertaining and valuing points of contact between the transaction and the states or governments whose competing laws are involved. . . . But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a warrant for foreign country to apply its law to an American transaction."; and *Chy Lung* v. *Freeman*, 92

United States to foreign vessels unless and until these ships, owned by foreign nationals and manned by foreign crews under foreign labor contracts, either breached their existing contracts and rehired their crews with American wages and working conditions, as dictated by the Unions, and/or discharged their foreign crews, in violation of their foreign labor contracts, and hired American seamen, furnished by the Unions, at wages and working conditions dictated by the Unions. In addition to the profoundly adverse effect this had on the economy of the Port of Houston, the discrimination against these ships also had far reaching international effects.[5] The attempt by the Unions to dictate to foreign vessels the wages and conditions which must be paid their foreign crews or to force the hiring of American crews not only had an adverse effect on the internal discipline of the ship, but also seeks to force the foreign vessels to violate the laws

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U.S. 275, 278 (1876), involving a California statute requiring a bond be posted for certain classes of passengers landing from a foreign country. In holding the statute unconstitutional, this Court said: "It is hardly possible to conceive a statute more skillfully framed, to place in the hands of a single man the power to entirely prevent vessels engaged in a foreign trade, say with China, from carrying passengers, or to compel them to submit to systematic extortion of the grossest kind."

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[5] Foreign policy considerations given such heavy weight by the Court in the decisions cited above, become even more compelling as this nation's trade relationships with other nations continue to expand. The specter of barriers to trade and to ever-expanding diplomatic relations between nations and their citizens is highlighted by the suit filed in December 1971 by the Attorney General of the United States against the States of Florida and Texas in the Supreme Court, No. 54, Original, for a decree that neither state has any right to control fishing by foreign vessels or their crews in the sea more than three (3) geographical miles from the coastline of the United States. The Complaint states that the exercise of such control by the states threatens to interfere with and cause irreparable harm to the foreign policy of and conduct of foreign relations by the United States.

of their own country. *McCulloch* v. *Sociedad Nacional*, 372 U.S. 10 (1963); *Incres S.S. Co.* v. *Maritime Workers*, 372 U.S. 24 (1963); and *Benz* v. *Compania Naviera Hidalgo*, 353 U.S. 138, 146-47 (1957).

No matter what words are used to state the question, it is entirely clear that the real issue involved in this case is whether Unions may exercise their vast economic power to dictate which nations will and will not trade with the United States. Yet, the decision in *Marine Cooks* as applied by the courts below allows this to be done. Unions picketing the ships of different nations for various reasons involving different grievances, real or imagined, can effectively halt the foreign commerce of the United States and disrupt relations between the United States and all other nations of the world. Certainly these grave risks deserve more careful consideration than has heretofore been given them.

3. The lower courts' application of the Norris-LaGuardia Act to this case fails to give effect to subsequent treaties and is a very real threat to the power of the United States to live up to its treaty obligations.

Throughout its history, the United States has entered into numerous treaties of friendship and navigation. These self-executing treaties such as are exemplified by the Treaty of Friendship, Commerce and Navigation between the United States of America and Liberia, 54 Stat. 1739 (1938), require the United States to give equal free access to "all" its ports to vessels and cargoes of the other contracting nation. This duty cannot be fulfilled if the Unions' conduct here is immunized by the Norris-LaGuardia Act.

Both Treaties and Acts of Congress are of equal authority. U. S. Constitution, Article VI, Clause 2; *Chae Chan*

Ping v. *United States,* 130 U.S. 581 (1889). Acts of Congress should be construed so as not to contravene the stipulations of a treaty. *Fong Yue Ting* v. *United States,* 149 U.S. 698 (1893). The Norris-LaGuardia Act was passed in 1932 and the Treaty with Liberia proclaimed in 1939. Thus, the Treaty represents "the last expression of the sovereign will" and the purpose and policies therein stated should control over an earlier Act of Congress. *Chae Chan Ping* v. *United States, supra,* at p. 600. *Cf. The Charming Betsy,* 6 U.S. (2 Cranch) 64, 118 (1804). A nation that repudiates its treaty obligations through application of its laws invites and remains open to such reprisals as the offended foreign nation may choose. The importance of world trade and the committment by treaties to the policy of free access to United States ports require accommodation. Restrictions on free access and trade are to be imposed by Congress not private citizens. Should all private interest groups seeking restrictions on free access and trade with foreign nations undertake private action to further their desired goal—*e.g.,* picket to urge the purchase of American textiles only—then each individual or group of individuals with private goals could effectively destroy the power of the United States government to conduct and control foreign relations and foreign commerce.

4. The decision of the courts below in finding that federal courts have no jurisdiction to grant injunctive relief in these circumstances will have the result of forcing cases of this nature involving questions of paramount federal concern, into the courts of the seaboard states for inconsistent resolution and thus further exacerbating the damage to international relations.

Questions of paramount federal concern involving the United States Constitution, Treaties and Acts of Congress

are involved in this case. Application of the Norris-LaGuardia Act in this situation results in rampant forum shopping and frustrates uniformity. As this Court said in *Boys Markets*:

> "The injunction, however, is so important a remedial device, particularly in the arbitration context, that its availability or non-availability in various courts will not only produce rampant forum shopping and maneuvering from one court to another but will also greatly frustrate any relative uniformity in the enforcement of arbitration agreements." [398 U.S. at 246].

Unless the Norris-LaGuardia Act is accommodated to the overriding policy considerations and obligations of treaties enacted subsequent to the passage of the Norris-LaGuardia Act, the different positions taken by state courts in the matter will result in port shopping by foreign vessels as well as forum shopping by litigants. Instead of the principle of non-discrimination mandated by our treaties and the Shipping Act, there will be discrimination as to which nation's vessels will be allowed to unload and/or obtain servicing at particular ports. Certainly such a result was never envisioned by Congress when it passed Norris-LaGuardia even under the conditions existing at the time of its passage. This is not the sort of "labor dispute" envisioned by Congress in passing the Norris-LaGuardia Act or covered literally by its terms. And even if it were, this is exactly the situation where compelling national interests require an accommodation with Norris LaGuardia.

CONCLUSION

In view of the internationally damaging and divisive effects of the chain of events set in motion by the Union's activities, this Court should grant the Writ. The ability of the Nation to carry out its treaty obligations is directly involved. To enjoin the Unions will only serve to have them address their arguments to Congress, the proper legislative forum, rather than undertake to exercise the power of the sovereign in conducting foreign relations and unduly burdening and restricting foreign commerce.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I, L. G. Clinton, Jr., Attorney for the Port of Houston Authority of Harris County, Texas, do hereby certify that on this the 14 day of June, 1972, copies of the foregoing Writ for Certiorari have been served on the following:

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Attorneys of record for Respondents, by mailing the same to them through the United States mail, postage prepaid.

L. G. CLINTON, JR.

APPENDIX A

IN THE

UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

Civil Action No. 71-H-1446

PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS,

Plaintiff,

v.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, ET AL,

Defendants.

ORDER DENYING INJUNCTION

This action came on for hearing this 21st day of December, 1971, on Plaintiff's application for a temporary injunction, and the Court having considered the pleadings, the Briefs and the arguments and admissions of counsel, the Court hereby finds that all Defendants are before the Court, and the Court is of the opinion that it has no jurisdiction to enjoin the activities of Defendants, based upon the provisions of the Norris-LaGuardia Act, 29 U.S.C. Section 101, et seq.

It is, therefore, ORDERED, ADJUDGED and DECREED that the Plaintiff's application for temporary injunctive relief be, and it is hereby, denied.

The clerk will furnish counsel copies of this order.

Signed this 30th day of December, 1971.

JOHN V. SINGLETON, JR.
UNITED STATES DISTRICT JUDGE

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 72-1010

PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS,
Plaintiff-Appellant,

v.

INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS, AFL-CIO, ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

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(March 2, 1972)

Before BELL, DYER and CLARK, Circuit Judges.

BELL, Circuit Judge: Alleging jurisdiction under 28 USCA, §§ 1331 and 1337, appellant Port Authority sought to enjoin the six defendant unions from maintaining so-called informational picket lines against selected foreign vessels in the Port of Houston. After a hearing, the district court denied injunctive relief and this appeal followed. We affirm.

The first determination made by the district court was that the matter involved a labor dispute within the contemplation of the Norris-LaGuardia Act, 29 USCA, §§ 101-115. Having reached that conclusion, the court then determined that it was without jurisdiction to grant injunctive relief.

The Port Authority seems to concede the fact of a labor dispute within the scope of the Act.[1] It is settled in any event that the events in controversy gave rise to a labor dispute. *Marine Cooks & Stewards* v. *Panama Steamship Company,* 1960, 362 U.S. 365, 370, 80 S.Ct. 779, 4 L.Ed.2d 797.

It is contended, however, that the conduct of the unions in interfering with foreign commerce which is protected by treaties between this country and other named countries was such as to give rise to an exception to the Norris-LaGuardia Act. As will be seen, this is not a wholly novel theory although it has not been advanced since the Supreme Court carved out another exception to the Act in *Boys Markets, Inc.* v. *Retail Clerk's Union,* 1970, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199.

Our place of beginning in resolving the question presented is the Norris-LaGuardia Act. As a historical fact, we know that it resulted from the concern of Congress over what was deemed to be an abuse of the injunctive

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[1] The Act defines a labor dispute as follows:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.
> 29 USCA, § 113(c)

process on the part of federal courts against unions. The approach of Congress to the problem was simple. It deprived courts of jurisdiction to enter injunctions in labor disputes:

> "No court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provision of this chapter . . ." § 1, 29 USCA, § 101.

The Act specifically denies jurisdiction to the federal courts to grant injunctive relief in the case of picketing and handbilling of the type here involved. The pertinent language, contained in § 4 of the Act, 29 USCA, § 104, is as follows:

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
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> • • • •
>
> "(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;"

The exceptions for fraud and violence are to be noted but there is no claim here of fraud or violence. The unions were jointly engaged in peacefully picketing selected foreign vessels in the Houston Port. At the time of the hearing, picket lines consisting of four pickets were being maintained at three of the forty-nine docks in the port.

The pickets carried placards and also handed out literature. The effort was to call the attention of the public to the declining job opportunities for the American seaman caused by the use of foreign vessels, and to the substandard wages and working conditions on such vessels. The public was asked not to patronize the foreign vessels. The result was that other workers refused to cross the picket lines and the foreign vessels could not be unloaded. The activities were being directed at vessels flying the Panamanian, Honduran and Liberian flags. The Port Authority alleged a large present loss of income because of this conduct of the unions.

The Port Authority urges that the activities in question violate a provision in the treaty between Liberia and this country,[2] and also constitute an impermissible interference with foreign commerce between this country and friendly foreign countries. Thus, the argument goes, an exception to the Norris-LaGuardia Act should be carved out to accommodate treaty and trade rights.

This contention must be considered in the frame of reference of other exceptions to the Act. As will be seen, some are expressly statutory, others are court-created to accommodate statutes on a *in pari materia* basis.

One statutory exception is the fraud and violence provision of 29 USCA, § 104, supra.[3] Another is the Taft-Hartley

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[2] Article 7 of the Treaty provides:

"Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nations of each of the High Contracting Parties equally with those of the most-favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation."

80 day injunction provision where the president and a federal court both conclude under stated procedures that a strike will imperil the national health or safety. 29 USCA, §§ 171-182. An injunction may also be issued at the behest of the National Labor Relations Board for temporary relief in the instances of unfair labor practices or secondary boycotts. 29 USCA, §§ 160 (j) and (l). Also, the enforcement of board orders in the circuit courts may take the form of an injunction. 29 USCA, § 160 (h). Title VII of the Civil Rights Act of 1964 (Equal Employment Opportunities), contains an express exception to the Norris-LaGuardia Act.

The Supreme Court has recognized two additional exceptions to the Act, both in connection with other Acts of Congress. Both were justified on the basis of accommodating the will of Congress under each of the Acts.

Under one such exception, injunctive relief against a strike over minor disputes under the Railway Labor Act, 45 USCA, § 151 et seq, was authorized. *Brotherhood of Railroad Trainman* v. *Chicago River & Indiana Railroad Company,* 1957, 353 U.S. 30, 77 S.Ct. 635, 1 L.Ed.2d 622. There the court reasoned that Congress intended to settle minor disputes under a form of compulsory arbitration, i.e., the Adjustment Board. The conclusion was that the injunction power was necessary to prevent the defeat of the jurisdiction of the Adjustment Board through a strike; hence the necessity of the accommodation of the Acts. 353 U.S. at 39-40. See also *Railway Express Agency, Incorporated* v. *Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers,* 5 Cir., 1971, 437 F.2d 388.

[3] Even where jurisdiction to grant injunctive relief is otherwise authorized, there are strict requirements to be followed by the federal district courts. See 29 USCA, §§ 107, 108 and 109. See also *New Negro Alliance* v. *Sanitary Grocery Company,* 1938, 303 U.S. 552, 561-62, 58 S.Ct. 703, 82 L.Ed. 1012.

Another exception came in the form of a decision that a district court was empowered to enjoin a strike in violation of a no-strike obligation contained in a collective bargaining agreement with a provision for binding arbitration. The contract was enforceable under § 301(a) of the Labor-Management Relation Act of 1947, 29 USCA, § 185(a). The Norris-LaGuardia Act was accommodated to § 301(a) and the policy of encouraging the arbitration of labor disputes. *Boys Markets, Inc.* v. *Retail Clerks Union,* supra. See also *New Orleans Steamship Assn.* v. *General Longshore Workers,* 389 F.2d 369, cert. den., 393 U.S. 828, 89 S.Ct. 92, 21 L.Ed.2d 99. In sum, the *Chicago River* case, involved statutory arbitration; *Boys Markets* involved contractual arbitration and federal jurisdiction ancillary thereto under § 301(a).

We come then to the issue presented by the Port Authority which is that we should now extend *Chicago River* and *Boys Market* to formulate an exception for protecting foreign commerce with friendly nations on the basis of underlying treaties. The short answer to this contention is that there is a Supreme Court decision squarely to the contrary.

In *Marine Cooks & Stewards* v. *Panama Steamship Company,* supra, the union was engaged in informational picketing of the same type, for the same purpose, and in much the same style as here in the Port of Tacoma, Washington. The Supreme Court held that a labor dispute existed within the ambit of the Norris-LaGuardia Act and that the district court lacked jurisdiction to enjoin the picketing. The court specifically rejected the idea that the Norris-LaGuardia Act contained an exception for interference with foreign trade or commerce. This decision is controlling.[4] The rationale of *Boys Market* is not such as would indicate an erosion of the holding in *Marine Cooks.*

The Norris-LaGuardia Act restriction on the power of federal courts to issue injunctions in labor disputes is virtually intact after 40 years. The exceptions to it, whether statutory or court-fashioned, are narrow indeed. The exception sought by the Port Authority here is not within any existing exception and is beyond our authority. The district court did not err in denying injunctive relief.

AFFIRMED.

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[4] We have examined three cases decided subsequent to *Marine Cooks*, each of which involved the validity of injunctions against unions or National Labor Relations Board activities in connection with foreign vessels or crews. See *International Longshoreman's Association, AFL-CIO* v. *Ariadne Shipping Company*, 1970, 397 U.S. 195, 90 S.Ct. 872, 25 L.Ed.2d 218, *McCullouch* v. *Sociedad Nacional*, 1963, 372 U.S. 10, 83 S.Ct. 671, 9 L.Ed.2d 547, and *Incres Steamship Company* v. *International Maritime Workers Union*, 1963, 372 U.S. 24, 83 S.Ct. 611, 9 L.Ed.2d 557. These cases involved the jurisdiction vel non of the National Labor Relations Board and are inapposite.

United States Court of Appeals

FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1971

No. 72-1010

D. C. DOCKET NO. 71-H-1446

PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS,
Plaintiff-Appellant,

v.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

Before BELL, DYER and CLARK, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

March 2, 1972

Issued As Mandate: March 24, 1972

APPENDIX B

UNITED STATES CONSTITUTION

Article I

Section. 8. The Congress shall have Power To . . .

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . .

Article II

Section. 2. The President . . .

. . . shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Article VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding.

. . .

Treaty of friendship, commerce, and navigation between the United States of America and Liberia. Signed at Monrovia August 8, 1938; ratification advised by the Senate of the United States August 1, 1939; ratified by the President of the United States August 30, 1939; ratified by Liberia November 16, 1939; ratifications exchanged at Monrovia November 21, 1939; proclaimed by the President of the United States November 30, 1939.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS a Treaty of Friendship, Commerce and Navigation between the United States of America and the Republic of Liberia was concluded and signed by their respective Plenipotentiaries at Monrovia on the eighth day of August, one thousand nine hundred and thirty-eight, the original of which Treaty, being in the English language, is word for word as follows:

The United States of America and the Republic of Liberia, desirous of strengthening the bond of peace which happily prevails between them, by arrangements designed to promote friendly intercourse between their respective territories through provisions responsive to the spiritual, cultural, economic and commercial aspirations of the people thereof, have resolved to conclude a Treaty of Friendship, Commerce and Navigation and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

Lester A. Walton, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to the Republic of Liberia, and

The President of the Republic of Liberia:

His Excellency C. L. Simpson, Secretary of State of the Republic of Liberia,

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following Articles:

ARTICLE I

The nationals of each of the High Contracting Parties shall be permitted to enter, travel and reside in the territories of the other; to exercise liberty of conscience and freedom of worship; to engage in professional, scientific, religious, philanthropic, manufacturing and commercial work of every kind without interference; to carry on every form of commercial activity which is not forbidden by the local law; to own, erect or lease and occupy appropriate buildings and to lease lands for residential, scientific, religious, philanthropic, manufacturing, commercial and mortuary purposes; to employ agents of their choice, and generally to do anything incidential to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the State of residence or as nationals of the nation hereafter to be most favored by it, submitting themselves to all local laws and regulations duly established.

The nationals of either High Contracting Party within the territories of the other shall not be subjected to the payment of any internal charges or taxes other or higher than those that are exacted of and paid by nationals of the State of residence.

The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law.

The nationals of each High Contracting Party shall receive within the territories of the other, upon submitting to conditions imposed upon its nationals, the most constant protection and security for their persons and property, and shall enjoy in this respect that degree of protection that is required by international law. Their property shall not be taken without due process of law and without payment of just compensation.

Nothing contained in this Treaty shall be construed to affect existing statutes of either of the High Contracting Parties in relation to emigration or to immigration or the right of either of the High Contracting Parties to enact such statutes, provided, however, that nothing in this paragraph shall prevent the nationals of either High Contracting Party from entering, traveling and residing in the territories of the other Party in order to carry on international trade or to engage in any commercial activity related to or connected with the conduct of international trade on the same terms as nationals of the most-favored nation.

Article II

With respect to that form of protection granted by National, State or Provincial laws establishing civil liability for bodily injuries or for death, and giving to relatives or heirs or dependents of an injured person a right of action or a pecuniary compensation, such relatives or heirs or dependents of the injured person, himself a national of either of the High Contracting Parties and injured within any of the territories of the other, shall, regardless of their alienage or residence outside of the territory where the injury occurred, enjoy the same rights and privileges as are or may be granted to nationals, and under like conditions.

ARTICLE III

The dwellings, warehouses, manufactories, shops, and other places of business, and all premises thereto appertaining of the nationals of each of the High Contracting Parties in the territories of the other, lawfully used for any purposes set forth in Article I, shall be respected. It shall not be allowable to make a domiciliary visit to, or search of any such buildings and premises, or there to examine and inspect books, papers or accounts, except under the conditions and in conformity with the forms prescribed by the laws, ordinances and regulations for nationals of the State of residence or nationals of the nation most favored by it.

ARTICLE IV

Where, on the death of any person holding real or other immovable property or interests therein within the territories of one High Contracting Party, such property or interests therein would, by the laws of the country or by a testamentary disposition, descend or pass to a national of the other High Contracting Party, whether resident or non-resident, were he not disqualified by the laws of the country where such property or interests therein is or are situated, such national shall be allowed a term of three years in which to sell the same, this term to be reasonably prolonged if circumstances render it necessary, and withdraw the proceeds thereof, without restraint or interference and exempt from any estate succession, probate or administrative duties or charges other than those which may be imposed in like cases upon the nationals of the country from which such proceeds may be drawn.

Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or

non-resident, shall succeed to such personal property and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases. In the same way, personal property left to nationals of one of the High Contracting Parties by nationals of the other High Contracting Party, and being within the territories of such other Party, shall be subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.

ARTICLE V

The nationals of each of the High Contracting Parties in the exercise of the right of freedom of worship, within the territories of the other, as hereinabove provided, may, without annoyance or molestation of any kind by reason of their religious belief or otherwise, conduct services either within their own houses or within any appropriate buildings which they may be at liberty to erect and maintain in convenient situations, provided their teachings or practices are not contrary to public morals; and they shall also be permitted to bury their dead according to their religious customs in suitable and convenient places established and maintained for the purpose, subject to the mortuary and sanitary laws and regulations of the place of burial.

ARTICLE VI

In the event of war between either High Contracting Party and a third State, such Party may draft for compul-

sory military service nationals of the other having a permanent residence within its territories and who have formally, according to its laws, declared an intention to adopt its nationality by naturalization, unless such persons depart from the territories of said belligerent Party within sixty days after the declaration of war. Such right to depart shall apply also to persons possessing the nationality of both High Contracting Parties unless they habitually reside in the territory of the country drafting for compulsory military service.

It is agreed, however, that such right to depart shall not apply to natives of the country drafting for compulsory military service, who after having become nationals of the other Party, have declared an intention to acquire or resume the nationality of the country of their birth. Such persons shall nevertheless be entitled in respect of this matter to treatment no less favorable than that accorded the nationals of any other country who are similarly situated.

ARTICLE VII

Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most-favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation.

ARTICLE VIII

With respect to customs duties or charges of any kind imposed on or in connection with importation or exportation, and with respect to the method of levying such duties

or charges, and with respect to all rules and formalities in connection with importation or exportation, and with respect to all laws or regulations affecting the sale, taxation, or use of imported goods within the country, any advantage, favor, privilege or immunity which has been or may hereafter be granted by either High Contracting Party to any article originating in or destined for any third country, shall be accorded immediately and unconditionally to the like article originating in or destined for the other High Contracting Party.

With respect to the amount and collection of duties on imports and exports of every kind, each of the two High Contracting Parties binds itself to give to the nationals, vessels and goods of the other the advantage of every favor, privilege or immunity which it shall have accorded to the nationals, vessels and goods of a third State whether such favored State shall have been accorded such treatment gratuitously or in return for reciprocal compensatory treatment. Every such favôr, privilege or immunity which shall hereafter be granted to nationals, vessels or goods of a third State shall simultaneously and unconditionally, without request and without compensation, be extended to the other High Contracting Party, for the benefit of itself, its nationals, vessels, and goods.

Article IX

Neither of the High Contracting Parties shall establish or maintain any import or export prohibition or restriction on any article originating in or destined for the territory of the other High Contracting Party, which is not applied to the like article originating in or destined for any third country. Any abolition of an import or export prohibition or restriction which may be granted even temporarily by

either High Contracting Party in favor of an article originating in or destined for a third country shall be applied immediately and unconditionally to the like article originating in or destined for the territory of the other High Contracting Party.

If either High Contracting Party establishes or maintains any form of quantative restriction or control of the importation or sale of any article in which the other High Contracting Party has an interest, or imposes a lower import duty or charge on the importation or sale of a specified quantity of any such article than the duty or charge imposed on importations in excess of such quantity, the High Contracting Party taking such action shall, upon request, inform the other High Contracting Party as to the total quantity, or any change therein, of any such article permitted to be imported or sold, or permitted to be imported or sold at such lower duty or charge during a specified period, and shall allot to the other High Contracting Party for such specified period a proportion of such total quantity as originally established or subsequently changed in any manner equivalent to the proportion of the total importation of such article which the other High Contracting Party supplied during a previous representative period, unless it is mutually agreed to dispense with such allotment. Neither of the High Contracting Parties shall, by import licenses, regulate the total quantity of importations into its territory or sales therein of any article in which the other High Contracting Party has an interest, unless the total quantity of such article permitted to be imported or sold during a quota period of not less than three months shall have been established, and unless the regulations covering the issuance of such licenses or permits shall have been made public before such regulations are put into force.

Article X

If either High Contracting Party establishes or maintains, directly or indirectly, any form of control of the means of international payment, it shall, in the administration of such control:

(a) Impose no prohibition, restriction, or delay on the transfer of payment for imported articles the growth, produce, or manufacture of the other High Contracting Party, or of payments necessary for and incidental to the importation of such articles;

(b) Accord unconditionally, with respect to rates of exchange and taxes or surcharges on exchange transactions in connection with payments for or payments necessary and incidental to the importation of articles the growth, produce, or manufacture of the other High Contracting Party, treatment no less favorable than that accorded in connection with the importation of any article whatsoever the growth, produce, or manufacture of any third country; and

(c) Accord unconditionally, with respect to all rules and formalities applying to exchange transactions in connection with payments for or payments necessary and incidental to the importation of articles the growth, produce, or manufacture of the other High Contracting Party, treatment no less favorable than that accorded in connection with the importation of the like articles the growth, produce, or manufacture of any third country.

With respect to non-commercial transactions, each High Contracting Party shall apply any form of control of the means of international payment in a non-discriminatory manner as between the nationals of the other High Contracting Party and the nationals of any third country.

Article XI

In the event that either High Contracting Party establishes or maintains a monopoly for the importation, production or sale of a particular product or grants exclusive privileges, formally or in effect, to one or more agencies to import, produce or sell a particular product, the High Contracting Party establishing or maintaining such monopoly, or granting such monopoly privileges, shall, in respect of the foreign purchases of such monopoly or agency, accord the commerce of the other High Contracting Party fair and equitable treatment. In making its foreign purchases of any article such monopoly or agency shall be influenced solely by competitive considerations such as price, quality, marketability, and terms of sale.

Article XII

All articles which are or may be legally imported from foreign countries into ports of the United States of America or are or may be legally exported therefrom in vessels of the United States may likewise be imported into those ports or exported therefrom in Liberian vessels, without being liable to any other or higher duties or charges whatsoever than if such articles were imported or exported in vessels of the United States; and reciprocally, all articles which are or may be legally imported from foreign countries into the ports of Liberia or are or may be legally exported therefrom in Liberian vessels may likewise be imported into ports or exported therefrom in vessels of the United States without being liable to any other or higher duties or charges whatsoever than if such articles were imported or exported in Liberian vessels.

In the same manner there shall be perfect reciprocal equality in relation to the flags of the two countries with

regard to bounties, drawbacks, and other privileges of this nature of whatever denomination which may be allowed in the territories of each of the Contracting Parties, on goods imported or exported in national vessels so that such bounties, drawbacks and other privileges shall also and in like manner be allowed on goods imported or exported in vessels of the other country.

Article XIII

The nationals, goods, products, wares, and merchandise of each High Contracting Party within the territories of the other shall receive the same treatment as nationals, goods, products, wares, and merchandise of the country with regard to internal taxes, transit duties, charges in respect of warehousing and other facilities and the amount of drawbacks and export bounties.

Article XIV

The merchant or other private vessels and cargoes of one of the High Contracting Parties shall, within the territorial waters and harbors of the other Party in all respects and unconditionally be accorded the same treatment as the vessel and cargoes of that Party, irrespective of the port of departure of the vessel, or the port of destination, and irrespective of the origin or the destination of the cargo. It is especially agreed that no duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges of whatever denomination, levied in the name or for the profit of the Government, public functionaries, private individuals, corporations or establishments of any kind shall be imposed in the ports of the territories or territorial waters of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels.

Article XV

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown.

Article XVI

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties shall be permitted to discharge portions of cargoes at any port open to foreign commerce in the territories of the other High Contracting Party, and to proceed with the remaining portions of such cargoes to any other ports of the same territories open to foreign commerce, without paying other or higher tonnage dues or port charges in such cases than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner at different ports in the same voyage outward, provided, however, that the coasting trade of the High Contracting Parties is exempt from the provisions of this Article and from the other provisions of this Treaty, and is to be regulated according to the laws of each High Contracting Party in relation thereto. It is agreed, however, that nationals and vessels of either High Contracting Party shall within the territories of the other enjoy with respect to the coasting trade most-favored-nation treatment.

Article XVII

Limited liability and other corporations and associations, whether or not for pecuniary profit, which have been or may hereafter be organized in accordance with and under the laws, National, State or Provincial, of either High

Contracting Party and which maintain a central office within the territories thereof, shall have their juridical status recognized by the other High Contracting Party provided that they pursue no aims within its territories contrary to its laws. They shall enjoy free access to the courts of law and equity, on conforming to the laws regulating the matter, as well for the prosecution as for the defense of rights in all the degrees of jurisdiction established by law.

The right of corporations and associations of either High Contracting Party which have been so recognized by the other to establish themselves in the territories of the other Party or to establish branch offices and fulfill their functions therein shall depend upon and be governed solely by the consent of such Party as expressed in its National, State or Provincial laws.

Article XVIII

The nationals of either High Contracting Party shall enjoy within the territories of the other, upon compliance with the conditions there imposed, such rights and privileges as have been or may hereafter be accorded the nationals of any other State with respect to organization of and participation in limited liability and other corporations and associations, for pecuniary profit or otherwise, including the rights of promotion, incorporation, purchase and ownership and sale of shares and the holding of executive or official positions therein. In the exercise of the foregoing rights and with respect to the regulation or procedure concerning the organization or conduct of such corporations or associations, such nationals shall be subjected to no condition less favorable than those which have been or may hereafter be imposed upon the nationals of the most-favored nation. The right of any of such corporations or associations as may be organized or con-

trolled or participated in by the nationals of either High Contracting Party within the territories of the other to exercise any of their functions therein, shall be governed by the laws and regulations, National, State or Provincial, which are in force or may hereafter be established within the territories of the Party wherein they propose to carry on their activities. The foregoing stipulations do not apply to organization of and participation in political associations.

ARTICLE XIX

The nationals including corporations and associations, of either High Contracting Party shall enjoy in the territories of the other Party, upon compliance with the conditions there imposed, most-favored-nation treatment in respect of the exploration for and exploitation of mineral resources; provided that neither Party shall be required to grant rights and privileges in respect of the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain, or in respect of the ownership of stock in domestic corporations engaged in such operations, greater than its nationals, corporations and associations receive from the other Party.

It is understood, however, that neither High Contracting Party shall be required by anything in this paragraph to grant any application for any such right or privilege if at the time such application is presented the granting of all similar applications shall have been suspended or discontinued.

ARTICLE XX

Commercial travelers representing manufacturers, merchants and traders domiciled in the territories of either High Contracting Party shall on their entry into and sojourn in the territories of the other Party and on their

departure, therefrom be accorded the most-favored-nation treatment in respect of customs and other privileges and of all charges and taxes of whatever denomination applicable to them or to their samples.

If either High Contracting Party requires the presentation of an authentic document establishing the identity and authority of a commercial traveler, a signed statement by the concern or concerns represented, certified by a consular officer of the country of destination shall be accepted as satisfactory.

Article XXI

There shall be complete freedom of transit through the territories including territorial waters of each High Contracting Party on the routes most convenient for international transit, by rail, navigable waterway, and canal, other than the Panama Canal and waterways and canals which constitute international boundaries, to persons and goods coming from, going to or passing through the territories of the other High Contracting Party, except such persons as may be forbidden admission into its territories or goods of which the importation may be prohibited by law or regulations, provided that the foregoing shall not be construed to prevent either High Contracting Party from excluding aliens from special areas within its territories closed to visit by law, military order or regulations. The measures of a general or particular character which either of the High Contracting Parties is obliged to take in case of an emergency affecting the safety of the State or vital interests of the country may, in exceptional cases and for as short a period as possible, involve a deviation from the provisions of this paragraph, it being understood that the principle of freedom of transit must be observed to the utmost possible extent.

Persons and goods in transit shall not be subjected to any transit duty, or to any unnecessary delays or restrictions, or to treatment as regards charges, facilities, or any other matter less favorable than that accorded to the most-favored nation.

Goods in transit must be entered at the proper custom-house, but they shall be exempt from all customs or other similar duties.

It is understood that all goods in transit through the territory of the United States of America and all goods in transit through the territory of Liberia when warehoused or otherwise stored shall be subject to storage charges.

All charges imposed on transport in transit shall be reasonable, having regard to the conditions of the traffic.

Nothing in this Article shall affect the right of either of the High Contracting Parties to prohibit or restrict the transit of arms, munitions and military equipment in accordance with treaties or conventions that may have been or may hereafter be entered into by either Party with other countries.

Article XXII

Nothing in this Treaty shall be construed to prevent the adoption of measures prohibiting or restricting the exportation or importation of gold or silver, or to prevent the adoption of such measures as either High Contracting Party may see fit with respect to the prohibition, or the control, of the export or sale for export, of arms, ammunition, or implements of war, and, in exceptional circumstances, all other military supplies.

Subject to the requirement that, under like circumstances and conditions, there shall be no arbitrary discrimination

by either High Contracting Party against the other High Contracting Party in favor of any third country, the stipulations of this Treaty shall not extend to prohibitions or restrictions (1) imposed on moral or humanitarian grounds; (2) designed to protect human, animal, or plant life or health; (3) relating to prison-made goods; (4) relating to the enforcement of police or revenue laws.

The stipulations of this Treaty do not extend to advantages now accorded or which may hereafter be accorded to neighboring States in order to facilitate short frontier traffic, or to advantages resulting from a customs union to which either High Contracting Party may become a party so long as such advantages are not extended to any other country.

The stipulations of this Treaty do not extend to advantages now accorded or which may hereafter be accorded by the United States of America, its territories or possessions or the Panama Canal Zone to one another or to the Republic of Cuba. The provisions of this paragraph shall continue to apply in respect of any advantages now or hereafter accorded by the United States of America, its territories or possessions or the Panama Canal Zone to one another, irrespective of any change in the political status of any of the territories or possessions of the United States of America.

Article XXIII

Subject to any limitation or exception hereinabove set forth, or hereafter to be agreed upon the territories of the High Contracting Parties to which the provisions of this Treaty extend shall be understood to comprise all areas of land and water over which the Parties, respectively, claim

and exercise dominion as sovereign thereof, except the Panama Canal Zone.

ARTICLE XXIV

The present Treaty shall come into force in all of its provisions on the day of the exchange of ratifications and shall continue in force for the term of five years from that day.

If within one year before the expiration of five years from the date on which the present Treaty shall come into force, neither High Contracting Party notifies to the other Party an intention of terminating the Treaty upon the expiration of the aforesaid period of five years, the Treaty shall remain in full force and effect after the aforesaid period and until one year from such a time as either of the High Contracting Parties shall have notified to the other Party an intention of terminating it.

The present Treaty shall, from the date of the exchange of ratifications, be deemed to supplant the Treaty of Commerce and Navigation between the United States of America and Liberia, concluded at London on October 21, 1862.

ARTICLE XXV

The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at Monrovia as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the present Treaty and have affixed their seals thereto.

Done in duplicate, at Monrovia, this eighth day of August nineteen hundred and thirty eight.

[SEAL] LESTER A. WALTON
[SEAL] C. L. SIMPSON

NORRIS-LA GUARDIA ACT

Act of March 23, 1932, 47 Stat. 70, 29 U.S.C.A. § 101 et seq.

SEC. 1. That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and au-

thority of the courts of the United States are hereby enacted.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not accord any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, any employee or prospective employee of the same whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the Acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons partici-

pating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect —

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complaintant's property will follow:

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than

will be inflicted upon defendants by the granting of relief;

(d) That complaintant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complaintant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complaintant's property: *Provided, however,* That if a complaintant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complaintant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complaintant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complaintant and the surety upon which a decree may be rendered in the same suit or proceeding against said complaintant and surety, upon a hearing to assess damages of which hearing complaintant and surety shall have reasonable notice, the said complaint and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complaintant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving

or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

SEC. 13. When used in this Act, and for the purposes of this Act —

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiation, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether

or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be defined or limited by Act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All Acts and part of Acts in conflict with the provisions of this Act are hereby repealed.

THE SHIPPING ACT

46 U.S.C. § 801 et seq.

§ 815. Discriminatory acts prohibited

It shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

It shall be unlawful for any common carrier by water, or other person subject to this chapter, either alone or in conjunction with any other person, directly or indirectly —

First. To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of

traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided,* That within thirty days after enactment of this Act, or within thirty days after the effective date or the filing with the Commission, whichever is later, of any conference freight rate, rule, or regulation in the foreign commerce of the United States, the Governor of any State, Commonwealth, or possession of the United States may file a protest with the Commission upon the ground that the rate, rule, or regulation unjustly discriminates against that State, Commonwealth, or possession of the United States, in which case the Commission shall issue an order to the conference to show cause why the rate, rule, or regulation should not be set aside. Within one hundred and eighty days from the date of the issuance of such order,. the Commission shall determine whether or not such rate, rule, or regulation is unjustly discriminatory and issue a final order either dismissing the protest, or setting aside the rate, rule or regulation. As amended Oct. 3, 1961, Pub.L. 87-346, § 16, 75 Stat. 766.

APPENDIX C

TO THE PUBLIC

American Seamen have lost approximately 50% of their jobs in the past few years to foreign flag ships employing seamen at a fraction of the wages of American Seamen.

American dollars flowing to these foreign ship owners operating ships at wages and benefits substandard to American Seamen, are hurting our balance of payments in addition to hurting our economy by the loss of jobs.

A strong American Merchant Marine is essential to our national defense. The fewer American flag ships there are, the weaker our position will be in a period of national emergency.

PLEASE PATRONIZE AMERICAN FLAG VESSELS, SAVE OUR JOBS, HELP OUR ECONOMY AND SUPPORT OUR NATIONAL DEFENSE BY HELPING TO CREATE A STRONG AMERICAN MERCHANT MARINE.

Our dispute here is limited to the vessel picketed at this site, the [name of picketed ship inserted]

American Radio Association AFL-CIO

International Organization of Master Mates and Pilots AFL-CIO

National Marine Engineers Beneficial Association AFL-CIO

National Maritime Union of America AFL-CIO

Radio Officers Union of the United Telegraph Workers AFL-CIO

Seafarers International Union of North America AFL-CIO

ATTENTION
TO THE PUBLIC

The wages and benefits paid seamen aboard this vessel [name of picketed ship inserted] are substandard to those of American Seamen.

This results in extreme damage to our wage standards and the loss of our jobs.

Please do not patronize this vessel.

Help the American Seaman.

We have no dispute with any other vessel at this site.

American Radio Association AFL-CIO

International Organization of Master Mates and Pilots AFL-CIO

National Marine Engineers Beneficial Association AFL-CIO

National Maritime Union of America AFL-CIO

Radio Officers Union of the United Telegraph Workers AFL-CIO

Seafarers International Union of North America AFL-CIO

Supreme Court, U. S.
FILED
JUN 26 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1604

Supreme Court, U.S.
FILED
OCT 10 1972
MICHAEL RODAK, JR., CLERK

PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS,

Petitioner,

—against—

THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH JUDICIAL CIRCUIT

MOTION FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

and

BRIEF OF THE REPUBLIC OF LIBERIA AS *AMICUS CURIAE*

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BURLINGHAM UNDERWOOD & LORD,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. .....

PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS,

Petitioner,

—against—

THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH JUDICIAL CIRCUIT

MOTION OF THE REPUBLIC OF LIBERIA FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

The Republic of Liberia, a sovereign State under whose laws and Flag the vessels involved herein are registered, hereby respectfully moves for leave to file a brief *amicus curiae*. Petitioner has consented to the filing of such a brief. Respondents have not.

The Republic of Liberia's brief will be limited to the single but crucial issue of whether a writ of *certiorari* should issue from this Honorable Court to the United States Court of Appeals for the Fifth Circuit to review a decision of that Court which refuses to uphold and apply

a Treaty currently in force between the United States of America and the Republic of Liberia (Treaty of Friendship, Commerce and Navigation, 1938, 54 Stat. 1739). This issue arises by virtue of the March 2, 1972, decision of the Fifth Circuit, affirming a holding by the United States District Court for the Southern District of Texas, Houston Division, that it lacked jurisdiction to restrain respondents from picketing vessels of the Republic of Liberia lying in the Port of Houston, Texas. Neither of the decisions below has as yet been officially reported, but the texts of both may be found in the Appendix prepared by Petitioner.

The Republic of Liberia has a legitimate concern with these proceedings. Over 38 million tons of merchant shipping are registered under the laws of the Republic of Liberia. Over 15% of all merchant ships in the world fly the Liberian Flag, and the tonnage of the merchant fleet of Liberia is, by a considerable margin, the largest in the world. The maintenance of its status as a principal maritime nation is a matter of highest importance to the Republic of Liberia.

Liberia is eager to protect its shipping from discriminatory attack by any interest and to maintain its jurisdiction and control over matters of internal order and economy aboard the vessels of its Flag under generally recognized principles of international law as well as provisions of the governing Treaty with the United States.

Liberia believes that, possibly because of emphasis on other points, the international law and treaty considerations in which it is so particularly and vitally interested were inadequately developed and considered by the courts below and it fears that they may not be adequately de-

veloped and presented here. It is for this reason that the Republic of Liberia requests this Honorable Court to grant its motion.

Respectfully submitted,

.....

FRANK L. WISWALL, JR.
Counsel for the
Republic of Liberia
25 Broadway
New York, N. Y. 10004

BURLINGHAM UNDERWOOD & LORD,
Of Counsel.

Dated: June 23, 1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. .....

PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS,

Petitioner,

—against—

THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH JUDICIAL CIRCUIT

BRIEF OF THE REPUBLIC OF LIBERIA AS *AMICUS CURIAE*

The Republic of Liberia respectfully urges this Honorable Court to grant the petition herein and to cause a writ of *certiorari* to issue to review the opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on March 2, 1972, and the judgment entered pursuant thereto on March 24, 1972.

Opinions Below

The opinions and orders of the Courts below have not yet been officially reported but appear in the Appendix prepared by Petitioner.

Jurisdiction

The judgment of the Court of Appeals for the Fifth Circuit was entered on March 24, 1972, and the Petition for Certiorari herein was filed within 90 days [28 U.S.C. § 2101 (c)] of that date. Petitioner invokes the jurisdiction of this Honorable Court under 28 U.S.C. § 1254 (1).

Questions Presented

Whether the Norris-LaGuardia Act (March 23, 1932, c. 90; 47 Stat. 70 *et seq.;* 29 U.S.C. § 101 *et seq.*) is applicable to a controversy of the sort at issue here, and whether, if otherwise applicable, that Act should be applied to prevent the courts of this Nation from upholding and enforcing specific treaty obligations of the United States of America.

Statutory Provisions Involved

UNITED STATES CODE, TITLE 29

§ 101. *Issuance of restraining orders and injunctions; limitations; public policy*

No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

§ 102. *Public policy in labor matters declared*

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

§ 113. *Definitions of terms and words used in chapter*

When used in this chapter, and for the purposes of this chapter:

• • •

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Treaty Provisions Involved

TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES AND LIBERIA. SIGNED AT MONROVIA, AUGUST 8, 1938. (54 STAT. 1739, T.S. No. 956).

ARTICLE I

. . . . .

The nationals of each High Contracting Party shall enjoy freedom of access to the courts of justice of the other on conforming to the local laws, as well for the prosecution as for the defense of their rights, and in all degrees of jurisdiction established by law.

. . . . .

ARTICLE VII

Between the territories of the High Contracting Parties there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties equally with those of the most-favored nation, shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation.

Article XIV

The merchant or other private vessels and cargoes of one of the High Contracting Parties shall, within the territorial waters and harbors of the other Party in all respects and unconditionally be accorded the same treatment as the vessel and cargoes of that Party, irrespective of the port of departure of the vessel, or the port of destination, and irrespective of the origin or the destination of the cargo. It is especially agreed that no duties of tonnage, harbor, pilotage, lighthouse, quarantine, or other similar or corresponding duties or charges of whatever denomination, levied in the name or for the profit of the Government, public functionaries, private individuals, corporations or establishments of any kind shall be imposed in the ports of the territories or territorial waters of either country upon the vessels of the other, which shall not equally, under the same conditions, be imposed on national vessels.

Article XV

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties, and carrying the papers required by its national laws in proof of nationality shall, both within the territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the Party whose flag is flown.

Article XVI

Merchant vessels and other privately owned vessels under the flag of either of the High Contracting Parties shall be permitted to discharge portions of cargoes at any port open to foreign commerce in the territories of the

other High Contracting Party, and to proceed with the remaining portions of such cargoes to any other ports of the same territories open to foreign commerce, without paying other or higher tonnage dues or port charges in such cases than would be paid by national vessels in like circumstances, and they shall be permitted to load in like manner at different ports in the same voyage outward, provided, however, that the coasting trade of the High Contracting Parties is exempt from the provisions of this Article and from the other provisions of this Treaty, and is to be regulated according to the laws of each High Contracting Party in relation thereto. It is agreed, however, that nationals and vessels of either High Contracting Party shall within the territories of the other enjoy with respect to the coasting trade most-favored-nation treatment.

Statement of the Case

The Republic of Liberia adopts Petitioner's statement of the case.

REASONS FOR GRANTING THE WRIT

The decisions below are not merely erroneous, but must have a serious and growing adverse impact upon both the foreign relations and the economies of the United States of America and the Republic of Liberia.

The courts below, going upon the narrowest conceivable interpretation of the Norris-LaGuardia Act, refused even to consider the basic issue of flagrant treaty violations committed by Respondents and their individual members.[1] What makes the decision of the Fifth Circuit Court of Appeals especially ripe for review, however, is that neither of the courts below, nor this Honorable Court in *Marine Cooks & Stewards* v. *Panama Steamship Co.*, 362 U.S. 365 (1960), has given any consideration to a most vital question, *viz.*: Is there an irreconcilable conflict between the public policy restraining the jurisdiction of the courts of the United States under the Norris-LaGuardia Act and the public policy upholding mutual rights and obligations under solemn international treaties? And, if so, which policy must prevail?

If an irreconcilable conflict of public policy does exist and if the policy expressed in the Norris-LaGuardia Act dominates the policy upholding the rights and obligations of treaties, then the decision of the court below may stand. But if there is no direct conflict of public policy, or if a

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[1] That both courts below accorded in declining to find jurisdiction does not, of course, determine whether the decision of the Fifth Circuit should be reviewed. In *Marine Cooks*, 362 U.S. 365 (1960), both lower courts were in accord; this Honorable Court granted *certiorari* and reversed.

conflict exists and the policy upholding treaty rights and obligations is of paramount importance, then the decision of the court below should be reversed.

The issue is of absolutely crucial international importance. A treaty right ignored is a treaty right abrogated; and a treaty obligation ignored becomes no obligation at all. Nowhere are such treaty questions more important than here, where the national security and international commerce of the contracting states are directly and obviously affected by the outcome.

A high percentage of imports to, and exports from, the United States of America are carried by Liberian vessels, pursuant to the FCN Treaty. If vessels of the Republic of Liberia may actually be prevented by Respondents from unloading or receiving cargoes at ports of the United States of America, the result must be that both the economies of Liberia and the United States will suffer, perhaps severely.

But the vital questions of law, both domestic and international, overshadow even the considerable economic impact. For the Treaty here in question between the United States and Liberia undertakes that:

> "... there shall be freedom of commerce and navigation. The nationals of each of the High Contracting Parties ... shall have liberty freely to come with their vessels and cargoes to all places, ports and waters of every kind within the territorial limits of the other which are or may be open to foreign commerce and navigation." [2]

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[2] Article VII.

and that

> "Merchant vessels . . . under the flag of either of the High Contracting Parties *shall be permitted to discharge* portions of cargoes at any port open to foreign commerce in the territories of the other High Contracting Party . . . and they *shall be permitted to load* in like manner at different ports in the same voyage outward . . . ."[3]

The reciprocal guarantee there given is stated boldly and unambiguously; but if any construction were needed, this Honorable Court has declared the rule which should be applied:

> "Where a treaty admits of two constructions, one restrictive as to the rights that may be claimed under it, and the other liberal, the latter is to be preferred. Shanks v. Dupont, 3 Pet. 242, 7 L.Ed. 666. Such is the settled rule in this court." *Hauenstein* v. *Lynham*, 100 U.S. 483, 487 (1879).

As against these declarations, and the status of treaties as the Law of this Land,[4] it is untenable that there should be an overriding public policy which would deprive the courts of the United States of jurisdiction to consider whether treaty rights have been violated. Surely, if such an overriding public policy is to be imputed to the Norris-LaGuardia Act, it must be evident within the Act itself; and Congress has, almost uniquely, made a careful declaration in Section 2 of that Act (29 U.S.C. § 102):

> "In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the

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[3] Article XVI. Italics supplied.

[4] Constitution of the United States of America, Article VI, cl. 2.

> United States, as such jurisdiction and authority are defined and limited in this chapter, *the public policy of the United States is declared as follows:*" [Italics supplied]

The same section then goes on to state, in two phrases, the governing considerations of public policy, *viz.*:

> (1) that the individual worker "have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment", and
>
> (2) that he "shall be free from the interference, restraint or coercion of *employers of labor, or their agents,* in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." [Italics supplied]

As to the first clause quoted above, the most striking fact of this case is that Respondents have not sought at any stage to organize the crews of these Liberian vessels. Those crews are already organized and represented by foreign maritime unions between whom and the shipowners collective bargaining agreements are currently in force. Nor have Respondents or their individual members sought work aboard the vessels.

As to the second clause, neither Petitioner nor the Republic of Liberia is an "employer of [seagoing] labor" nor an "agent" thereof. While it is clear that the direct

employer-employee relationship is not a prerequisite to the application of the Norris-LaGuardia Act, the language of the Act itself clearly contemplates the existence of an employer-employee "nexus" in the sense that, proximately or potentially, it is in the employment context that the Act seeks to make the worker "free from the interference, restraint, or coercion of employers of labor". Neither Petitioner nor the Republic of Liberia are in the proximate or potential relation to Respondents which the Act contemplates; there is no nexus here.

Liberia submits that there is no conflict in this case between the public policy expressed in the Norris-LaGuardia Act and the public policy upholding treaty rights and obligations. The non-existence of a conflict means that the public policy embodied in the governing Treaty must be enforced—and the decision below must be reversed.

Should this Honorable Court feel, however, that despite the total absence of an employer-employee nexus a conflict of public policies does exist, then it must necessarily determine which will prevail. In that event, the Republic of Liberia submits that the public policy upholding treaty rights and obligations must prevail.

The sanctity of a treaty rests upon a pledge, made before the world by the states party to it, that it is a solemn international contract, made for consideration, which each party commits itself to uphold and which each party may hold the other to. Moreover, the treaty here drawn into consideration was made and executed more than six years after the enactment of the Norris-LaGuardia Act and, as this Honorable Court has frequently declared, the later

Treaty will prevail over the prior statute. See, *e.g., Hijo* v. *United States,* 194 U.S. 315, 324 (1904).[5]

Mr. Justice Black, writing for a majority of this Honorable Court in *Marine Cooks,* 362 U.S. 365, said:

> "As we pointed out in the *Benz* case, a ship that voluntarily enters the territorial limits of this country subjects itself to our laws and jurisdiction as they exist." [at p. 372]

But the Treaty involved here was the law when these Liberian vessels entered the territorial waters of the United States, and it guarantees the "freedom of commerce and navigation" which is explicitly set out in its several Articles.[6] As to jurisdiction, the Treaty is not only international law but is the "Law of the Land" under the Constitution of the United States of America. What meaning can such law have if courts have no jurisdiction to enforce it? Without such jurisdiction it is meaningless as "law", and it cannot have been the intent of the framers of the Constitution of this Nation that a Treaty should be a mere act of futility, without jurisdiction in the courts of the Contracting States to enforce its specific provisions.[7] Where such overriding considerations of public policy enter, this Honorable Court has specifically held that the courts of the United States *do* have jurisdiction, and that the strictures of the Norris-LaGuardia Act must be accom-

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[5] And for a decision to the same effect in the very courts below here, see *United States* v. *85,237 Acres of Land, etc.,* 157 F. Supp. 150, 155 (S.D. Tex., 1957), affirmed 252 F.2d 116 (5 Cir. 1958).

[6] Articles VII, XIV, XVI.

[7] The principle of access to the courts to enforce Treaty and other rights is embodied generally in Article I of the FCN Treaty.

modated to the public policy in question. *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235 (1970). The underlying principle is not a novel one; it has long-standing application to cases in which foreign relations and foreign commerce are involved. *Brown* v. *Duchesne,* 60 U.S. (19 How.) 183, 197 (1857).

Should there be a conflict between the public policy of the Norris-LaGuardia Act and the public policy upholding treaty rights and obligations, it is clear that the overriding public policy in favor of international comity, observance of international law, stability in foreign relations and freedom in transaction of foreign commerce clearly call for application of the principle of accommodation in the instant case. The courts below have refused to apply that principle as enunciated by this Honorable Court.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit Court of Appeals.

Dated: June 23, 1972

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of June, 1972, three copies of the within Motion and Brief *amicus curiae* were mailed, postage prepaid, to Counsel for the parties listed below. I further certify that all parties required to be served have been served.

.....

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71-1604

No. .....

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MICHAEL RODAK,

IN THE

Supreme Court of the United States

..... Term of 19.....

PORT OF HOUSTON AUTHORITY OF HARRIS COUNTY, TEXAS,

Petitioner,

v.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

—o—

BRIEF FOR RESPONDENTS IN OPPOSITION

Opinions Below

The opinion of the District Court (App. A-1 of Petition) was not officially reported. The opinion of the Court of Appeals for the Fifth Circuit (App. A-2 to 8) is reported at 456 F. 2d 50.

Jurisdiction

The alleged jurisdiction requisites are set forth in the Petition.

Questions Presented

1. Whether the Court below erred in concluding it had no jurisdiction to issue an injunction enjoining respondents' activities, by virtue of the provisions of the Norris-LaGuardia Act, 29 U.S.C. Section 101 et seq.

2. Whether this Court's decision in *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365 (1960), should be reconsidered.

3. Whether, upon such reconsideration, an exception to the Norris-LaGuardia Act should be carved out, premised upon accommodation to foreign treaty provisions, so as to authorize Federal Courts to issue injunctions against informational peaceful picketing of foreign vessels by American merchant seamen, not interested in the vessel's internal economy, but rather in preserving job opportunities for themselves in the United States.

Statute and Treaty Involved

The Norris-LaGuardia Act, 29 U.S.C., Section 101 et seq., and the Treaty involved, are set forth in the Petition (App. B-20 to 28 and App. B-2 to 19).

Statement

This litigation concerns activities of six defendant American maritime unions, representing American merchant seamen. Members of such unions in the Port of Houston, Texas, established picket lines consisting of four pickets at three of forty-nine docks in the Port of Houston. The three vessels picketed, The Eastern Glory, The Ilkon Tak, and The St. Nicholas, were all flying the Liberian Flag.

The American seamen pickets carried placards and also handed out literature as set forth in the petition (App. C-1-2). Their effort was to call the attention of the public to the declining job opportunities for American merchant seamen caused by the use of foreign vessels, and to the substandard wages and working conditions on such vessels. The public was asked not to patronize the picketed vessels and other workers refused to cross the picket lines and work on the three picketed vessels. It is conceded that there was no intent to organize or represent the foreign crews of the picketed vessels (Petition, 4). The Petitioner, Port of Houston Authority of Harris County, Texas, is an American employer, operating the docks where the picketed vessels were berthed.

The petitioner brought an action seeking injunctive relief against respondent unions on the ground that such peaceful picketing violated the laws and treaties of the United States, and was an undue burden and interference with foreign relations and foreign commerce. The District Court denied petitioners' request for a temporary restraining order and after hearing, denied petitioner's request for a preliminary injunction, citing this Court's decision, *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365 (1960), applying the proscriptions of the Norris-LaGuardia Act. The Court of Appeals for the Fifth Circuit affirmed, and in its opinion, rejected petitioner's attempt to carve out an exception to said Norris-LaGuardia Act, premised upon the purported grounds of accommodation of such Act to treaty provisions between our Country and Liberia.

ARGUMENT

1. Where American merchant seamen peacefully picket foreign vessels, protesting loss of job opportunities here in the United States, to such vessels, and substandard wages or substandard conditions aboard such vessels, such activities constitute a "labor dispute", within the meaning of the Norris-LaGuardia Act. Federal Courts have no jurisdiction to grant injunctions in labor disputes.

As the Fifth Circuit at bar held (456 at 53):

> "The Norris-LaGuardia Act restriction on the power of Federal Courts to issue injunctions in labor disputes is virtually intact after 40 years".

Nor can there be any peradventure of doubt, that the activities about which the petitioner complains, constitute a labor dispute within the meaning of the Norris-LaGuardia Act. This Court's decision resolved the latter issue twelve years ago, in *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365 (1960).

The facts at bar and those in *Marine Cooks, supra,* are virtually identical, the sole and immaterial difference being the mechanical means used for the picketing. At bar, it was on foot, patrolling at the vessel. In *Marine Cooks, supra,* it was by picket boat patrolling around the vessel.

In both *Marine Cooks, supra,* and at bar, the peaceful picketing protested American merchant seamen loss of job opportunities here in the United States to foreign vessels,[1] and to the substandard wages and working condi-

[1] U. S. Department of Commerce Publication, Maritime Administration, MARAD 1970 U. S. Govt. Printing Office Stock No. 0307-0021, Chart. VI p. 27. Said Chart illustrates that in 1947 U. S. commercial seaborne cargo was 142.2 million tons. In 1969 such U. S. commercial seaborne cargo increased to 427.9 million tons,

tions aboard such vessels, lawful conduct as this Court said in *Marine Cooks* (362 at 371), under Section 20 of the Clayton Act, 29 U.S.C. Sec. 52.

Respondent's lawful activities may not be converted to unlawful conduct, as the petitioner suggests, citing *Benz* v. *Compania Naviera Hidalgo,* 353 U.S. 138 (1957), because of the adverse effect such lawful picketing activities may have on the internal discipline of the picketed foreign vessels. For as this Court stated in *Marine Cooks, supra* (362 at 371):

> "Nor does the language of the Norris-LaGuardia Act leave room to hold that jurisdiction it denies a District Court to issue a particular type of restraining order can be restored to it by a finding that the nonenjoinable conduct may 'interfere in the internal economy of a vessel registered under the flag of a friendly foreign power.'" [12]

[12] Unlike the situation in the Benz case, in which American unions to which the foreign seamen did not belong picketed the foreign ship in sympathy with the strike of the foreign seamen aboard, the union members here were not interested in the internal economy of the ship, but rather were interested in preserving job opportunities for themselves in this country. They were picketing on their own behalf, not on behalf of the foreign employees as in Benz. Though the employer here was foreign, the dispute was domestic.

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a 300% increase in 22 years. In contrast to such increase of seaborne U. S. commercial cargo, are the following statistics reflecting substantial loss of employment opportunities for American merchant seamen. In 1947 U. S. merchant vessels carried 57.6% of such U. S. commercial seaborne cargo. In 1969, a period spanning 22 years, the percentage of U. S. commercial seaborne cargo carried by U. S. Flag vessels was decreased to 4.8%. Conversely, such figures demonstrate that foreign flag vessels increased their percentage of transporting U. S. commercial seaborne cargo from 42.6% in 1947 to 95.2% in 1969.

Most significant, as distinguished from *Benz, supra,* but identical with *Marine Cooks, supra,* at bar, the respondent unions did not intend or seek to organize or represent the foreign seamen on the picketed foreign vessels. Petitioner so concedes (Pet. p. 4). Nor was respondents' picketing on behalf of the foreign crewmen as in *Benz, supra.* On the contrary, American merchant seamen here were picketing solely in their own behalf (fn. 1 *supra*), and as the Fifth Circuit at bar held (456 at 51):

> "The Port Authority seems to concede the fact of a labor dispute within the scope of the act."[1] (footnote omitted)

It is clear by the foregoing, that present at bar is a labor dispute within the meaning of the Norris-LaGuardia Act. Under long established statutory and decisional law, the Court below was correct in concluding that no injunctive relief may issue. By virtue of the above, review of the foregoing issue by this Court is unwarranted.

2. This Court's decision in *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365 (1960), requires no reconsideration.

Initially, it must be noted that petitioner, as an American employer, has available for utilization the exclusive Congressional scheme for resolution of a labor dispute in Port of Houston, Texas. National Labor Relations Act, 49 Stat. 449 as amended, 29 U.S.C. Section 151, 158(b)(4). *Benz, supra* (at 143 fn. 5); *Madden* v. *Grain Elevators Flour & Feed Mill Wkrs., etc.*, 334 F. 2d 1014 (7 Cir. 1964); *Grain Elevators Flour & Feed Mill Wkrs., etc.* v. *NLRB*, 376 F. 2d 774 (DC Cir. 1967).

Equally significant, is that remedies for violation of the proscriptions of Section 8(b)(4) of such Labor Act, "in

circumstances unrelated to its employer-employee relations", such as at bar, is available to any person. *Incres Steamship Co.* v. *International Maritime Workers Union,* 372 U.S. 24, 27 (1963). And whether the conduct complained of by the petitioner, or any other person involving circumstances unrelated, "to its employer-employee relations", is unlawful, must be determined by " * * * our laws and jurisdiction as they exist". *Marine Cooks & Stewards, supra* (at 372).[2] For under our laws, such aforesaid conduct complained of may be protected, prohibited or left to the free play of the economic forces. *NLRB* v. *Nash Finch Co.,* 404 U.S. 138, 92 S. Ct. 373, 377 (1971). Only after a determination has been made of the complained of conduct and if found proscribed, may the restrictions of Norris-LaGuardia be lifted and then only by the NLRB, as provided in the aforesaid National Labor Relations Act as amended, 29 U.S.C. Sec. 160(1), Sec. 10(1).[3]

In substance, petitioner herein is seeking to by-pass the foregoing elaborate Congressional scheme and arrogate unto itself the insulation from the provisions of the Norris-LaGuardia Act, which, however, is solely the right and province of the National Labor Relations Board under warranted circumstances.

Request for reconsideration of a long standing decision of this Court, of necessity brings into play the doctrine of

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[2] The foregoing concept applies equally to foreign vessels berthed within our territorial limits. As this Court said in *Benz, supra* (at 142, 143), and reaffirmed in *Marine Cooks, supra* (at 372); "It is beyond question that a ship voluntarily entering the territorial limits of another country subjects itself to the laws and jurisdiction of that country. Wildenhaus Case, 1887, 120 U.S. 1, 7 S. Ct. 385, 30 L. Ed. 565". (*Benz* at 142).

[3] The issue of preemption, provided for in the National Labor Relations Act as amended, supra, raised by respondents in the District Court, was found unnecessary by the Court to be passed upon, the Court finding absence of jurisdiction of the action by virtue of Norris-LaGuardia provisions.

stare decisis. It must be further pointed out that *Marine Cooks & Stewards, supra,* holding, its rationale and thrust in facts and circumstances identical to those at bar, was reiterated by this Court in *McCulloch* v. *Sociedad National, etc.,* 372 U.S. 10, 18 (1963).

As this Court said in *Boys Markets Inc.* v. *Retail Clerk's Union Local 770,* 398 U.S. 235 (1970), relative to the doctrine of *stare decisis* (at 240), " • • • important policy considerations militate in favor of continuity and predictability in the law". And although said doctrine does not command blind adherence to the Court's latest decision, adherence nevertheless, should be so had unless its observance, " • • • involves a collision with a *prior* doctrine more embracing in its scope, intrinsically sounder and verified by experience" (398 at 241) (emphasis added). The petitioner at bar has not shown, for none exists, any prior doctrine to this Court's decision in *Marine Cooks, supra,* which would require the by-passing of the *stare decisis* principle, let alone a showing and proof of such a prior doctrine more embracing in scope, intrinsically sounder and verified by experience. On the contrary, on the issue of experience alone, there has been no such experience and the record is devoid of the same.

Further to be considered is the fact, as the Fifth Circuit found, Norris-LaGuardia's proscriptions have stood virtually intact for 40 years. Said Act, its history and experience is a clear expression of the legislature for two score years, an acknowledgment of its sound legislative object. This Court, in comparable instances, has carefully expressed its judicial deference to the legislature in areas such as present at bar, where the latter is preeminent, and an acknowledgment that any other course would constitute judicial usurpation. *Edwards* v. *Pacific Fruit Express,* 390 U.S. 538 (1968), *Steel Workers* v. *Bouligny,* 382 U.S. 153 (1967).

Furthermore, as this Court has enunciated, labor legislation such as the Norris-LaGuardia Act, is the Congres-

sional distillation of "strong contending forces and deeply held views" of the populous. *Local 1967 Carpenters* v. *N.L.R.B.*, 357 U.S. 93 (1958). Such legislation constitutes the legislative resolution of such views, and to overrule or modify the results of such distillation, would manifest the strongest demonstration of the rejected concept of judicial usurpation of the legislative functions of government. For, if Norris-LaGuardia is to be repealed, modified or amended, such efforts must be directed to Congress, not to this Court, as petitioner improperly is seeking to do.

3. There is no basis in fact or law to warrant extreme judicial surgery so as to carve out an exception to Norris-LaGuardia's proscriptions, to accommodate a Treaty provision and thus put Federal Courts back in the injunction business in labor disputes.[4]

Petitioner's alleged authority for the requested extreme judicial surgery is premised upon this Court's *Boys Markets* decision, *supra*. Petitioner's reliance thereon is wholly unfounded as the following analysis of the *Boys Markets* decision and rationale demonstrates.

This Court, in *Boys Markets, supra*, was presented with the issue of reexamining its *Sinclair Refining Co.* v. *Atkinson* holding, 370 U.S. 195 (1962), that Norris-LaGuardia's anti-injunction provisions precluded federal courts from enjoining a strike in breach of a collective bargaining agreement's no strike provision, even though contractual provisions were therein contained, enforceable under Section 301(a) of the Labor Management Relations Act of 1947, for binding arbitration of the grievance over which the strike was called.

This Court at the threshold of its *Boys Markets* decision, made clear that its prior *Textile Worker's Union of*

[4] F. Frankfurter & N. Greene, The Labor Injunction (1930).

America v. *Lincoln Mills,* 353 U.S. 488 (1957) holding was to fashion substantive and procedural aspects of "federal labor *contract law.*" The Court found that the anti-injunction provisions of the Norris-LaGuardia Act did not prohibit the type of relief there proposed, and noted that "refusal to arbitrate (the issue in Lincoln Mills) was not part and parcel of the abuses against which the Act was aimed", and furthermore, "the Act itself manifests a policy determination that arbitration should be encouraged". (398 at 242)

The *Boys Markets* Court pointed out, that its subsequent decisions fashioning such federal contract labor law, "emphasized the importance of arbitration as an instrument of federal policy for resolving labor disputes between labor and management * * *" (at 243), and the effects upon federal contract labor law of its *Avco Corp.* v. *Aero Lodge,* 735, 390 U.S. 557 (1968) decision authorized such labor contract actions brought in state courts, to be removed to the federal forum wherein the *Sinclair* decision precluded the enforcement of the agreed upon contractual bargain (at 244). It viewed its *Avco* decision in the context of its *Sinclair* decision, taken in conjunction with *Lincoln Mills* and its progeny, to have produced an anomolous situation, which in effect frustrated the very provisions of the law (Section 301(a) N.L.R.A. as amended), which Congress clearly intended to apply for breaches of collective bargaining agreements and which the parties themselves had agreed to in advance.

This Court emphasized throughout its *Boys Markets* decision that in its accommodation of Norris-LaGuardia with the aforesaid subsequently enacted Section 301(a), there was no central issue inconsistent with the purposes of such enactments. On the contrary, it stated (at 252):

> "* * * the central purpose of Norris-LaGuardia Act to foster the growth and viability of labor organizations is hardly retarded—if anything, this goal

is advanced—by a remedial device that merely enforces the obligation that the union freely undertook under a specifically enforceable agreement to submit disputes to arbitration.[22] * * *"

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[22] As well stated by the neutral members of the A.B.A. Sinclair committee:

"Any proposal which would subject unions to injunctive relief must take account of the Norris-LaGuardia Act and the opposition expressed in that Act to the issuing of injunctions in labor disputes. Nevertheless, the reasons behind the Norris-LaGuardia Act seem scarcely applicable to the situation * * * (in which a strike in violation of a collective-bargaining agreement is enjoined). The Act was passed primarily because of widespread dissatisfaction with the tendency of judges to enjoin concerted activities in accordance with 'doctrines of tort law which made the lawfulness of a strike depend upon judicial views of social and economic policy.' (Citation omitted.) Where an injunction is used against a strike in breach of contract, the union is not subjected in this fashion to judicially created limitations on its freedom of action but is simply compelled to comply with limitations to which it has previously agreed. Moreover, where the underlying dispute is arbitrable, the union is not deprived of any practicable means of pressing its claim but is only required to submit the dispute to the impartial tribunal that it has agreed to establish for this purpose. A.B.A. Sinclair Report 242."

How petitioner squares the aforesaid central and crucial ***Boys Markets*** holding, *supra*, with its rapacious attempt to emasculate Norris-LaGuardia, frankly escapes us.

Would petitioner's action at bar, if successful, comport with the aforesaid "central purpose of the Norris-LaGuardia Act to foster the growth and viability of labor organizations"? Would such central purpose "this goal", be advanced? To the contrary, the respondent unions' growth and viability have been most seriously affected (fn. 1 *supra*). In effect, petitioner now seeks to render its *coup de grace* to the remnants of such viability. And

to accomplish such rapacious result, it asks this Court to totally disregard the clear, expressed aforesaid Congressional central purpose of the Norris-LaGuardia Act, and instead, through the euphemism of "accommodation", to lay waste to a crucial statute which has remained virtually intact nigh these past forty years. And, have the respondent unions here, as in *Boys Markets*, "freely undertook", to be subject to injunctions? The answer is clearly in the negative.

This Court obviously recognized that attempts such as petitioners' efforts at bar, may perforce be utilized to expand upon its *Boys Markets* holding, contrary to clear Congressional intent. For this Court, in concluding its discussion in *Boys Markets* specifically stated (at 253):

> "Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act. We deal only with the situation in which a collective-bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance."

Petitioner, in pursuing its accommodation theory and attempting to track it with this Court's *Boys Markets* holding, contends that as in *Boys Markets* the Liberian Treaty, similar to Section 301(a) aforesaid, came into existence subsequent to the enactment of Norris-LaGuardia (Pet. pp. 11-12). And, the unfounded argument proceeds, the Treaty obligation provides for free access to "all" ports of the contracting parties. Petitioner then states that the Norris-LaGuardia anti-injunction provisions, frustrate this subsequent Treaty, and therefore, as in *Boys Markets*, the Act should be accommodated to the Treaty. The ready answer to such argument is that *Boys Markets*, as shown above, is no authority for the facts at

bar so as to warrant any accommodation. Additionally, although the Liberian Treaty arose subsequent to Norris-LaGuardia, nevertheless, as petitioner admits (Pet. p. 11), at the time of the passage of the Act, there were in effect, and had been in effect throughout our history, similar treaties providing for comparable free access to all ports, a fact well known to Congress at that time and to this Court when it rendered its *Marine Cooks & Stewards* decision, *supra*.[5]

Finally, Liberian vessels have free access to all our ports under our treaties. Free access does not, however, insulate foreign nations from the application of the laws of the nation where the port is located, for as this Court has stated, *supra*, "a ship voluntarily entering the territorial limits (of our country), subjects itself to the laws and jurisdiction of (our country)". One of such laws of seasoned vintage, virtually intact, is Norris-LaGuardia with its anti-injunction provisions.

The petitioner, in thunderous rhetoric, laments the vast union economic power which can dictate which nation this country may trade with. Again, petitioner is in error. An examination of federal publications (fn. 1 *supra*) clearly refutes such statement of rhetoric. On the contrary, such power can only objectively be considered to reside with "the other side."

More significant, however, petitioner ignores the fact and conveniently so, that the exercise of lawful informational picketing and handbilling by American merchant seamen, protesting their loss of job opportunities here in

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[5] As to Treaties with friendly nations in force at all times material here, and which provide for "free access to all ports", see U. S. State Department, publication Treaties In Force—A List of Treaties and Other International Agreements of the United States, edition dated October 31, 1955.

the United States to the foreign vessels, is a lawful exercise of basic fundamental First Amendment rights.[6] The exercise of such constitutional rights clearly does not depend upon economics.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

By: HOWARD SCHULMAN

Of Counsel

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New York, New York, July 13, 1972

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[6] Presented in the District Court as a defense, was that the conduct complained of constituted lawful exercise of First Amendment rights. *Amalgamated Food Employees Union Local 590,* v. *Logan Valley Plaza,* 391 U.S. 308 (1968); peaceful picketing at a location related to the object. The District Court found unnecessary the resolution of such defense, finding no jurisdiction by virtue of Norris-LaGuardia.

Certificate of Service

HOWARD SCHULMAN, attorney for respondents, does hereby certify that on this 13th day of July, 1972, copies of the foregoing brief in opposition was served on the following:

Leon Jaworski, Esq.
L. G. Clinton, Jr., Esq.
A. J. Harper II, Esq.
800 Bank of the Southwest Building
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Attorneys of record for petitioners, by mailing the same to them through the United States mail, postage prepaid.

HOWARD SCHULMAN